

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 306.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JESSE JOHNSON.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original	Print.
Certificate of judges United States circuit court of appeals.	1	1
Statement of facts.	1	1
Questions of law.	7	3
Judge's certificate.	8	4
Clerk's certificate.	9	4



1 United States circuit court of appeals for the second circuit.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR, }
against }
 JESSE JOHNSON, DEFENDANT IN ERROR.

A decree having been duly made and entered on the 9th day of February, 1895, in the circuit court of the United States for the eastern district of New York, adjudging that there is due from the United States of America, the plaintiff in error, to Jesse Johnson, the defendant in error, the sum of six thousand five hundred dollars, for services, together with disbursements and clerks' fees, amounting in the aggregate to six thousand five hundred and thirteen dollars and ninety-five cents (\$6,513.95); and the matter having been duly brought into this court by writ of error taken by the said United States, and having come before this court for a hearing, questions of law arose, as to which this court desires the instruction of the Supreme Court of the United States for their proper decision.

The facts out of which such questions arose are as follows:

1. Said Johnson was and is a citizen of the United States, residing in the city of Brooklyn, in the eastern district of the State of New York; on the 27th day of January, 1890, said Johnson, by and with the consent of the Senate, was duly appointed district attorney of the United States for the eastern district of New York, for the term of four years, subject to the conditions prescribed by law; thereupon, and at about that time, he duly qualified as such district attorney under the appointment aforesaid, and held such office from that time until the year 1894.

2. In the year 1891 said Johnson was employed and directed by the Government of the United States to institute proceedings on behalf of the United States of America for the condemnation of certain lands on Staten Island adjacent to Fort Wadsworth in the said eastern district, for a mortar battery. Such employment was made as follows: At the special written request of the Secretary of War, the Attorney-General instructed said Johnson, in writing, to institute such proceedings on behalf of the United States for the condemnation of such lands; with such written instruction he enclosed a copy of such request from the Secretary of War and stated that he acted agreeably thereto.

Such direction and employment was made and given under special provisions of law. The following statutes have reference to such direction and employment, to wit: The provision as to gun and mortar batteries and the procurement of land or right pertaining thereto, contained in the act of August 18th, 1890 (26th Statutes at Large, 316); and the provision of the act of July 23d, 1892 (27th Statutes at Large, 258), appropriating the sum of \$500,000 for the procurement of land or right pertaining thereto for sites, fortification, and seacoast defenses.

3. The provisions of the act of August 18th, 1890, above referred to, are as follows:

"Gun and mortar batteries: For construction of gun and mortar batteries for defence of Boston Harbor, two hundred and thirty-five thousand dollars; New York, seven hundred and twenty-six thousand dollars; San Francisco, two hundred and sixty thousand dollars."

"For the procurement of land or right pertaining thereto, needed for the sight, location, construction, or prosecution of works for fortifications and coast defences, five hundred thousand dollars, or so much thereof as may be necessary, and hereafter the Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement by condemnation of any land, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications and coast defences, such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: Provided, That when the owner of such land, or rights pertaining thereto, shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase the same at such price without further delay: Provided further, That the Secretary of War is hereby authorized to accept on behalf of the United States donations of land, or rights pertaining thereto, required for the above-mentioned purposes.

4 "And provided further, That nothing herein contained shall be construed to authorize an expenditure, or to involve the Government in any contracts for the future payment of money, in excess of the sums appropriated therefor."

3. Proceeding under such employment, said Johnson, in the name of and for the Government of the United States, took proceedings for acquiring such lands by condemnation, and so proceeded that decrees of condemnation in favor of the Government of the United States against the owners and persons interested in such lands, respectively, were duly made and entered. For the purpose of carrying on such proceedings of condemnation it was necessary to search and ascertain the titles to such lands, all of which was done by said Johnson, under his employment aforesaid.

4. After such services were rendered said Johnson made and presented two bills against the Government of the United States for such services, and thereupon the Attorney-General approved and allowed such bills—the one at the sum of four thousand dollars (\$4,000) and the other at the sum of two thousand five hundred dollars (\$2,500).

5. The services rendered as aforesaid, and for which such bills were presented, were worth the sum of four thousand dollars and twenty-five hundred dollars, respectively. All such services were rendered in the year 1892.

6. It has been the custom and usage of the Government of the United States, for many years prior to the year 1892, and for many years prior to the time of the said employment, to pay to district attorneys of the United States for services like, and under employment similar, to that herein, compensation outside of and apart from the annual salary of such district attorneys, as fixed by statute at the sum of two hundred dollars.

7. Said Johnson has received from the Government of the United States for services (other than those hereinbefore mentioned) rendered to the Government of the United States in the year 1892 as district attorney or under employment or directions from the Attorney-General the sum of twenty-two hundred and fifty dollars.

8. In the year 1891 said Johnson had rendered services to the Government of the United States in and about the acquisition of other lands in said district by condemnation proceedings, all of which services were rendered under employments similar to that hereinbefore set forth and in acquiring lands for like purposes.

For such services rendered in the year 1891 said Johnson has been paid by the Government of the United States a sum exceeding six thousand dollars. He has also been paid for other services rendered by him to the Government of the United States in the year 1891 further and additional sums, and the aggregate so paid to him for services rendered in the year 1891 exceeds six thousand dollars by a sum which, together with the amounts paid to him as aforesaid for services rendered in the

year 1892, equals the sum of six thousand dollars, and such excess
6 over six thousand dollars exists and appears after crediting and allowing on the sums so received by said Johnson the necessary expenses of his office, including the necessary clerk hire, as audited and allowed to him in the years 1891 and 1892.

9. After such services rendered in the year 1892, and after the said sum of six thousand five hundred dollars had been allowed by the Attorney-General as aforesaid, the accounting and financial officers of the United States caused a warrant on funds appropriated for the War Department to be drawn for the sum of six thousand five hundred dollars and conveyed into the Treasury of the United States. Such warrant was drawn and conveyed as aforesaid against and in payment of the amount which said Johnson for services rendered in the year 1891 had as aforesaid been paid in excess of the maximum fixed by section 835 of the Revised Statutes. Such conveyance and application was made by the Government of the United States, but without the consent of said Johnson, and except as above stated said claim for sixty-five hundred dollars has not been allowed or paid.

10. After such services were rendered as aforesaid in the year 1892, said Johnson duly requested that the amounts so allowed be allowed and paid by the proper officers of the Treasury, but such officers refused to audit or allow such bills or any part of the same except as aforesaid, and refused to allow or pay to the petitioner any part of the same.

7 11. Upon the trial it was admitted as follows:

"It is admitted that in the year 1891 the expense account of the plaintiff Johnson was \$1,018.23, which was allowed by the Attorney-General.

"It is further admitted that if the amounts he received for services in obtaining lands in said district (which services are similar in nature, employment, etc., to those here claimed for) are to be computed as a part of the amount limited by section 835 of the Revised Statutes, then he has received in excess of the amount so limited for the year 1891 a sum which, added to the amounts received by him for the year 1892, and which are fees and emoluments referred to by section 835 of the Revised Statutes, equals the sum of \$6,000 and the legitimate office expenses of his office.

"And it is further admitted that if the services here rendered and the other similar services stated above are to be accounted as a part of the maximum fixed by section 835 of the Revised Statutes, and if the Government, having paid plaintiff for one year in excess of such maxi-

mum, has the right to recoup, set off, or counterclaim against an amount otherwise due, such overpayment, then (that is, if both propositions are held) plaintiff has no cause of action here."

Upon these facts this court desires information upon the questions of law for their proper decision, namely:

1. Is said Johnson entitled to be paid by the Government of the United States the said sum of six thousand five hundred dollars for the services rendered as aforesaid in the year 1892?

The foregoing question is submitted without reference to the provisions of section 835 of the Revised Statutes, which are referred to in the questions following.

If the foregoing question is answered in the affirmative, then there is presented the further question—

2. Is such compensation to be included in the fees and emoluments of claimant's office within the provisions of sections 834, 835, and 844 of the Revised Statutes?

If both the above questions are answered in the affirmative, then there is presented the further question—

3. Can the Government of the United States, under the circumstances here stated, convey and apply the said sixty-five hundred dollars as such sum was conveyed and applied as aforesaid on account of the payments made by the United States as herein stated for services rendered in the year 1891?

And to that end this court hereby certifies such questions to the Supreme Court.

Dated February 4th, 1897.

E. HENRY LACOMBE,
N. SHIPMAN,

*Judges of the United States Circuit Court of Appeals
for the Second Circuit.*

- 9 UNITED STATES OF AMERICA, *Second Circuit, ss:*

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the case entitled "The United States of America, plaintiff in error, against Jesse Johnson, defendant in error," was duly filed and entered of record in my office, by order of said court, on the 4th day of February, 1897; and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of the State of New York, this 4th day of February, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-first.

[SEAL.]

JAMES C. REED,
*Clerk United States Circuit Court of Appeals
for the Second Circuit.*

(Indorsed on cover:) Case No. 16492. Term No. 306. The United States, plaintiff in error, vs. Jesse Johnson. U. S. C. C. of appeals, 2nd circuit. (Certificate.) Filed February 12th, 1897.

